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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 281

UNITED STATES OF AMERICA, APPELLANT

vs.

D. D. ADAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

FILED JULY 31, 1929

SUPREME COURT OF THE UNITED STATES

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UNITED STATES OF AMERICA, APPELLANT

vs.

D. D. ADAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

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[Minute entry of impaneling of jury omitted in printing.]

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#1112

In United States District Court, Eastern District of Arkansas

Indictment

Filed April 3, 1928

In the District Court of the United States in and for the Eastern District of Arkansas, at the April term thereof, A. D. 1928, held in the western division of said district.

The grand jurors of the United States, impaneled, sworn, and charged to inquire into offenses committed in the eastern district of Arkansas, at the term aforesaid of the court aforesaid, on their oaths present:

That Drury D. Adams, on or about the 30th day of June, 1926, at Batesville, in Independence County, in the State of Arkansas, was officer and agent, to wit, that is, the said Drury D. Adams was president of the Union Bank & Trust Company, at Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established, and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas, concerning banks, and which said Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the eighth Federal reserve district, in compliance with and under and by virtue of the acts of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that the said Drury D. Adams, so being president of said member bank, then and there with an intent
4 on his part to injure and defraud said member bank, and to deceive the officers and directors of said Federal reserve bank and of said member bank; and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, wilfully, unlawfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its said banking business; that is to say, in the book and record of said member bank, known and designated as the "individual ledger," on a page provided for the keeping of the record of the account of D. D. Adams and Sons, showing checks drawn on and deposits made with said member bank by the said D. D. Adams and Sons, a certain

entry in the column under the word "Deposits," and opposite the date "Jun. 30, 1926," which said entry is in the figures following, to wit:

"75000,"

which said entry then and there purported to show and did in substance and effect indicate and declare that the said D. D. Adams and Sons had made a deposit of $75,000.00 with said member bank on June 30, 1926, and that the said account of the said D. D. Adams and Sons was entitled to be credited with that sum, when in truth and in fact the said D. D. Adams and Sons had not made a deposit of $75,000.00 with said member bank on the aforesaid date, and said account was not entitled to said credit, as aforesaid; and that said entry so as aforesaid made was unjustified, unwarranted, and false, as the said Drury D. Adams then and there well knew, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

(Signed) IRA J. MACK,
Assistant United States Attorney.

[File endorsement omitted.]

[Order transferring cause to Northern Division omitted in printing.]

[Clerk's certificate omitted in printing.]

In United States District Court for the Northern Division of the Eastern District of Arkansas

No. 1112

UNITED STATES VS. D. D. ADAMS

Plea of former jeopardy and former acquittal

Filed June 3, 1929

Comes the defendant, D. D. Adams, and files this, his plea of "former jeopardy" and "former acquittal" of the charge embraced in the indictment herein, numbered 1112, and in support of same he alleges:

That the indictment herein charges that the defendant, D. D. Adams, being president of the Union Bank & Trust Company, of Batesville, Arkansas, with intent on his part to injure and defraud said bank, and to deceive the officers and directors of the Federal reserve bank and of said member bank, and the agents and examiners appointed under the law to examine the affairs of said member bank, wilfully, unlawfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its business, known and designated as the "individual ledger," on a page provided for the keeping of the record of the account of D. D. Adams & Sons,

showing checks drawn on and deposits made with said member bank by the said D. D. Adams & Sons, a certain entry in the column under the word "Deposits," and opposite the date "Jun. 30, 1926," which said entry is in the following figures, to wit:

"75'00,"

which said entry then and there purported to show and did in substance and effect indicate and declare that the said D. D. Adams & Sons had made a deposit of $75,000.00 with said member bank on June 30th, 1926, and that said account was entitled to be credited with that sum, when in truth and in fact the said D. D. Adams & Sons had not made a deposit of $75,000.00 with said member bank on the aforesaid date, and said account was not entitled to said credit, as aforesaid, and that said entry was unjustified, unwarranted, and false.

That heretofore, to wit, on July 9th, 10th, and 11th, 1928, this defendant has been tried before a jury duly empaneled and selected for that purpose, in the District Court of the United States, for the Northern Division of the Eastern District of Arkansas, a court of proper and competent jurisdiction, under an indictment theretofore returned in said court against him, charging him in the first count thereof with having made a certain false entry in a certain book and record then and there used by said member bank, referring to the Union Bank & Trust Company, of Batesville, Arkansas, said record known as the journal ledger and daily balance book, on a page of said book dated June 30th, 1926, on the debit side of said page under the heading "Items," in the division and space of said page used for the account of Federal Bank & Trust Company, of Little Rock, dated "Jun. 30, 1926," a copy of said item being as follows:

"R 75 000"

which said entry then and there purported to show, and did in substance and effect indicate and declare that on said 30th day of June, 1926, said member bank had made a remitttance of $75,000 to the Federal Bank & Trust Co., of Little Rock, Ark., whereas in truth and in fact no such remittance of $75,000 was made on said date, and said Federal Bank & Trust Company was not then and there entitled to be charged therefor, etc., a copy of which indictment is attached hereto as Exhibit A.

That on said trial so had in this court, as aforesaid, on said last-mentioned indictment this defendant was found not guilty.

That evidence was introduced by the United States in said former trial whereby it was shown, and the United States relied for a conviction, that the said D. D. Adams did draw a certain draft on said 30th day of June, 1926, signed by Dixie Cotton Oil Company, by D. D. Adams, on the Interstate Trust & Banking Company, of New Orleans, La., and take credit upon the books of said company for said sum of $75,000.00, and charge same to the Federal Bank & Trust Company, of Little Rock, all of said charges

and credits and said draft being the identical charges, credits, and drafts, and all being based upon the single act of placing said draft in the hands of a cashier or assistant cashier of said Union Bank & Trust Company on said 30th day of June, 1926, all of which the Government must now rely upon for a conviction herein, and said charge being the same identical charge as that contained in the present indictment, and the evidence required to convict in this case being the same identical evidence heretofore introduced and relied upon by the Government, and said indictment being based upon the same identical section of law, to wit, Revised Statutes of the United States, sec. 5392, Sept. 26, 1918 (40 Stat. 972).

That before the jury would be authorized to convict the defendant in this case of the crime of making the false entry charged it would first be necessary for it to hear and consider the same identical evidence submitted to the jury in the former trial and to draw different and opposite conclusions from said evidence to that reached by the jury in the former trial.

And defendant here tenders proof of all of the allegations and facts set forth and alleged herein and prays that upon a hearing of said evidence that the indictment herein be quashed and that defendant be discharged.

(Signed) T. H. CARAWAY,
COLEMAN & REEDER,
Attorneys for Defendant.

[File indorsement omitted.]

11 *Exhibit A to plea of former jeopardy and acquittal*

UNITED STATES OF AMERICA,
Eastern District of Arkansas.

In the District Court of the United States in and for the Eastern District of Arkansas, at the April term thereof, A. D. 1928, held in the Western Division of said district.

The grand jurors of the United States, impanelled, sworn, and charged to inquire into offenses committed in the Eastern District of Arkansas, at the term aforesaid, of the court aforesaid, on their oaths present:

That Drury D. Adams and Army Hodges on or about the 30th day of June, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit, that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the eighth Federal reserve district, in com-

pliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there, with intent on their part
12 to injure and defraud said member bank, and to deceive the officers and directors of said Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its said banking business, that is to say, in the book and record of said member bank known and designated as "journal, ledger, and daily balance" book, on the page in said book dated "Jun. 30, 1926," on the debit side of said page under the heading "Items," in the division and space of said page used for the account of "Fed. Bk. & Tr. Co.," a copy of said entry being as follows:

"R. 75000,"

which said entry then and there purported to show and did in substance and effect indicate and declare that on said 30th day of June, 1926, said member bank had made a remittance of $75,000 to the Federal Bank & Trust Company, of Little Rock, Arkansas, whereas in truth and in fact no such remittance of $75,000 was made on said date by said member bank to the said Federal Bank & Trust Company, and said Federal Bank & Trust Company was not then and there entitled to be charged therefor, and the said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT II

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore, to wit, on or about the 23rd day of August, 1926, the said Drury D. Adams and Edwin Army Hodges, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit, that is, the said Drury D. Adams was president
13 and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Co., of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning

banks, which said Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the eighth Federal reserve district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there with intent on their part to injure and defraud said member bank, and to deceive the officers and directors of said Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its said banking business, that is to say, in the book and record of said member bank known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated "Aug. 23, 1926," on the debit side of the said page under the heading "Items" in the division and space of said page used for the account of "Fed. Bk. & Tr. Co.," a copy of said entry being as follows:

"D. D. Adams and Sons 15,000.

"By D. D. A."

14 which said entry then and there purported to show and did in substance and effect indicate and declare that on said 23rd day of August, 1926, said member bank made a remittance of $15,000.00 to the Federal Bank & Trust Company, of Little Rock, Arkansas, whereas in truth and in fact no such remittance of $15,000 was made on said date by said member bank to said Federal Bank & Trust Company, and said Federal Bank & Trust Company was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statutes in such case made and provided, and against the peace and dignity of the United States.

COUNT III

And the grand jury aforesaid, upon their oaths, further present:

That Drury D. Adams and Edwin Army Hodges, on or about the 23rd day of August, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit: that is, the said Drury D. Adams was president, and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company, of Batesville, Arkansas, was then and there a banking corporation

that had theretofore been created, organized, and established, and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Co. was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the eighth Federal reserve district, in compliance with and under and by means of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member
15 of the Independence Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there with intent on their part to injure and defraud said member bank, and to deceive the officers and directors of said Federal reserve bank and of said member bank, and the agents and examiners of said member bank, unlawfully, wilfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its banking business, that is to say, in the book and record of said member bank known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated "Aug. 23, 1926," on the debit side of said page for the account of "Fid. Bk. & Tr. Co.," a copy of said entry being as follows:

"D. D. A. and Sons 10000.

"By D. D. A."

which entry then and there purported to show and did in substance and effect indicate and declare that on said 3rd day of August, 1926, said member bank had made a remittance of $10,000.00 to the Fidelity Bank & Trust Co., of Memphis, Tennessee, whereas in truth and in fact no such remittance of $10,000.00 was made on said date by said member bank to the said Fidelity Bank & Trust Company, and said Fidelity Bank & Trust Company was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT IV

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

16 That Drury D. Adams and Edwin Army Hodges, on or about the 23d day of August, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit: that is, the said Drury D. Adams was president and the said

Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the eighth Federal reserve district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there with the intent on their part to injure and defraud said member bank and divers other persons whose names are to the grand jurors unknown, and who were creditors, shareholders, and depositors of said member bank, certain of the moneys, funds, and credits of said member bank, then and there being to the amount and of the value of $25,000.00, the particular kind, description, numbers, amounts, and values of which said moneys, funds, and credits, respectively, this grand jury has no means of knowing, and can not therefore here set out, did unlawfully, fraudulently, feloniously, and wilfully misapply by unlawfully, fraudulently, feloniously,
17 and wilfully and not for any use, benefit, or advantage of the said member bank, converting and applying the same moneys, funds, and credits to the use, benefit, and advantage of the said Drury D. Adams and divers other persons to the grand jurors unknown, which said conversion and misapplication of the last-mentioned moneys, funds, and credits was then and there accomplished by the said Drury D. Adams and said Edwin Army Hodges in the following manner; that is to say, by virtue of the power of control, direction, and management which the said Drury D. Adams and Edwin Army Hodges as president and assistant cashier, respectively, of said member bank, then and there possessed and exercised over the moneys, funds, and credits of the same, the said Drury D. Adams and Edwin Army Hodges, at the time and place in this count aforesaid, with the intent aforesaid, did unlawfully, feloniously, fraudulently, knowingly, and wilfully misapply the sum of $25,000 of the moneys, funds, and credits of the said member bank to the payment of a certain draft, No. 8660, for the sum of $25,000.00, bearing date "Aug. 21, 1926," issued by said member bank by the said "E. A. Hodges, a cashier," drawn on and payable to the order of the Liberty Central Tr. Co., of St. Louis, Mo., and which draft was paid by the said Drury D. Adams and Edwin Army Hodges out of the moneys, funds, and credits of the said member bank for the use,

benefit, and advantage of the said member bank, whereby the said sum became then and there lost to the said member bank, and the moneys, funds, and credits of the same then and there were and are depleted in that amount, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT V

That Drury D. Adams and Edwin Army Hodges, on or about the 5th day of October, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit: that is, the said Drury D. Adams was president and the said Edwin Army
18 Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Mo., in the eighth Federal reserve district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there with intent on their part to injure and defraud said member bank, and to deceive the officers and directors of said Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its banking business; that is to say, in a book and record of said member bank known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated "Oct. 5th, 1926," on the debit side of said page under the heading "Items" in the division and space of said page used for the account of "sundry banks (items in transit)," and being the eighth item thereof, a copy of said entry being as follows:

"Hazen 27,125.25,"

which said entry then and there purported to show and in sub-
19 stance and effect did indicate and declare that on said October 5, 1926, said member bank had made a remittance of $27,125.25 to the Bank of Grand Prairie, and said Bank of Grand Prairie

was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustifiable, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT VI

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That Drury D. Adams and Edwin Army Hodges, on or about the 8th day of March, 1927, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit: that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Mo., in the eighth Federal reserve district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in the county of Independence and in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, re-
20 spectively, of said member bank, then and there with intent on their part to injure and defraud said member bank, and to deceive the officers and directors of said Federal reserve bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its said banking business, that is to say, in the book and record of said member bank known and designated as "journal, ledger, and daily balance" book, on the page in said book dated "Mar. 8, 1927," on the debit side of said page under the heading "Items" in the division and space of said page used for the account of the "sundry names (items in transit)," and being the ninth item thereof, a copy of said entry being as follows:

"Hazen 27,125.25,"

which said entry then and there purported to show and did in substance and effect indicate and declare that on the said 8th day of March, 1927, said member bank had sent to the Bank of Prairie, Hazen, Arkansas, certain items aggregating $27,125.25 for collection

for the account of the said member bank, whereas in truth and in fact no such remittance of $27,125.25 for the account of said member bank was sent by said member bank on the said 8th day of March, 1927, to the said Bank of Grand Prairie, Hazen, Arkansas, for collection for the account of the said member bank, and the said Bank of Grand Prairie was not then and there entitled to be charged therefor, and said entry so made, as aforesaid, was unjustifiable, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

COUNT VII

21 And the grand jurors aforesaid, on their oaths aforesaid, do further present:

That Drury D. Adams and Edwin Army Hodges, on or about the 31st day of December, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit: that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Ark., which said Union Bank & Trust Co. was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Mo., in the eighth Federal district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there with intent on their part to injure and defraud the said member bank, and to deceive the officers and directors of the Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there
22 used by said member bank in transacting its said banking business; that is to say, in a book and record of said member bank known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated "Dec. 31, 1926," on the debit side of said page under the heading "Items" in the division

and space of said page used for the account of "Lib. Cent. Tr. Co.," a copy of said entry being as follows:

"R 10000.00,"

which said entry then and there purported to show and did in substance and effect indicate and declare that on said 31st day of December, 1926, said member bank had made a remittance of $10,000 to the Liberty Central Trust Company, of St. Louis, Missouri, whereas in truth and in fact no such remittance of $10,000.00 was made on said date by said member bank to the said Liberty Central Trust Company, and said Liberty Central Trust Company was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

(Signed) IRA J. MACK,
Assistant United States Atty.

Endorsed: No. 9100. Signed C. C. Kavanaugh, foreman. Filed April 8, 1928.

24 In United States District Court, Eastern District of Arkansas, Northern Division

No. 1112

UNITED STATES OF AMERICA VS. D. D. ADAMS

Judgment

June 4, 1929

Now, on this day, June 4, 1929, this cause comes on for consideration on the regular call of the docket, and the United States appears by Charles F. Cole, United States attorney for the Eastern District of Arkansas, and the defendant, D. D. Adams, appears in person and by his attorneys, T. H. Caraway and Coleman & Reeder, and thereupon there is presented to the court the plea of former jeopardy and former acquittal heretofore filed herein by the defendant, D. D. Adams, to the indictment against him herein, and the same is submitted to the court upon the indictment herein and said plea of former jeopardy and former acquittal, a copy of the indictment in the case of the United States of America vs. D. D. Adams, No. 1116, formerly pending in the District Court of the United States, Northern Division of the Eastern District of Arkansas, and the judgment of acquittal in said case, entered upon a verdict of not guilty returned by a jury therein, no other evidence being introduced, the argument of counsel in support of said plea, as well as the argument of the district attorney in opposition thereto, and the court being well and sufficiently advised as to the law arising upon said plea doth find that under the provisions of section 5209 of the Revised Statutes of the United

States, as amended, and as now construed by this court, said plea of former jeopardy and former acquittal should be sustained.

It is therefore by the court considered, ordered, and
25 adjudged that said plea of former jeopardy and former acquittal be, and the same is hereby, sustained, and said indictment is hereby dismissed, and that the bond of defendant, D. D. Adams, be exonerated. Thereupon the plaintiff, the United States of America, through its said district attorney, objected and excepted to the ruling and judgment of the court in sustaining said plea of former jeopardy and former acquittal and dismissing said indictment and exonerating bond of defendant, and asked that its objections and exceptions be noted of record, which is hereby accordingly done.

(Signed) JOHN E. MARTINEAU,
United States District Judge.

26 In United States District Court, Eastern District of Arkansas, Northern Division

#1112

UNITED STATES OF AMERICA VS. D. D. ADAMS

Memorandum on sustaining plea of former jeopardy and acquittal

Filed June 4, 1929

A plea of former jeopardy and acquittal has been filed by the defendant in this case, and same comes on for hearing.

The district attorney concedes that the copy attached to this plea is a true and correct copy of the indictment against this same defendant in case No. 1116, and that upon a trial of said indictment in said case No. 1116 defendant was acquitted on all counts thereof by the jury.

The court thereupon declares the law to be that as the false entry charged in the indictment in this case, although made in another and different book of the bank, is based upon the same draft as the false entry charged in the indictment in case No. 1116, on which the defendant was tried and acquitted, that the former acquittal bars this prosecution, as the court construes section 5209, Revised Statutes, as amended.

In other words, the court construes the above section of law, the one on which this indictment is based, that there can be but one prosecution for false entries based upon any single draft or check passing through a bank, even though several different entries are made in the different books of the bank, provided all relate to the same basic check or draft.

(Signed) JOHN E. MARTINEAU,
United States District Judge.

[File endorsement omitted.]

28 In United States District Court

[Title omitted.]

Order allowing appeal

Upon reading the petition of the United States of America for appeal from this court to the Supreme Court of the United States and consideration of the assignment of errors presented therewith, it is by the court ordered that the appeal as prayed for be, and the same is hereby, allowed and granted, and the clerk of this court is hereby directed to forthwith prepare a transcript of the record, proceedings, papers, orders, and judgments entered in said cause under the seal of this court and transmit the same to the Supreme Court of the United States.

Signed this 1 day of July, 1929.

(Signed) JOHN E. MARTINEAU,
United States District Judge,
Eastern District of Arkansas.

29 In United States District Court

[Title omitted.]

Petition for appeal

Filed July 1, 1929

To the honorable JOHN E. MARTINEAU,
Judge of the District Court aforesaid.

And now comes the United States of America, plaintiff herein, by Charles F. Cole, United States district attorney, and respectfully shows to said court that it feels itself aggrieved by the judgment of this court made and entered of record by said court on the 4th day of June, 1929, in the above-entitled cause, sustaining the plea of former jeopardy and former acquittal filed by the defendant, D. D. Adams, to the indictment herein and dismissing said indictment and exonerating the bond of the defendant, and it hereby appeals from said order and judgment to the Supreme Court of the United States from the said District Court of the Northern Division of the Eastern District of Arkansas, for the reasons particularly specified in the assignment of errors which is filed herein, and it prays that this appeal may be allowed by this court and that a transcript of the record, proceedings, and papers upon which said order and judgment was made, duly authenticated by the seal of this court, may be sent to the Supreme Court of the United States, as by law provided.

(Signed) CHAS. F. COLE,
United States District Attorney for the Eastern District of Arkansas, Attorney for Plaintiff.

[File endorsement omitted.]

80 In United States District Court

[Title omitted.]

Assignment of errors

Filed July 1, 1929

Comes the plaintiff, United States of America, by Charles F. Cole, and prays an appeal from the final judgment of this court in sustaining the plea of former jeopardy and former acquittal filed by the defendant, D. D. Adams, to the indictment herein and dismissing said indictment and exonerating the bond of said defendant, and assigns as errors the following, to wit:

I

That the court erred in sustaining said plea of former jeopardy and former acquittal and dismissing said indictment and exonerating the bond of said D. D. Adams.

II

That the judgment of the court is contrary to the law.

Wherefore said plaintiff in error prays that the said judgment of the said District Court of the United States may be reversed and held for naught, and that plaintiff be granted such other and further relief as may seem right to the court and provided by law.

(Signed) CHAS. F. COLE,
United States District Attorney for the Eastern District of Arkansas, Attorney for United States.

[File endorsement omitted.]

81 [Citation in usual form showing service on D. D. Adams omitted in printing.]

82 [Clerk's certificate to foregoing transcript omitted in printing.]

83 In Supreme Court of the United States

Statement of points upon which appellant will rely, and designation of parts of record to be printed

Filed Aug. 10, 1929

STATEMENT

I

Appellant will rely upon the following point in the above-entitled cause:

1. That the court below erred in sustaining the plea of former jeopardy and former acquittal and dismissing the pending indictment.

34 II

Omitting pages 1, 2, 5, 6, 7, 23, and 27, the record as filed should be printed.

CHARLES E. HUGHES, Jr.,
Solicitor General.
O. R. LUHRING,
Assistant Attorney General.
HARRY S. RIDGELY, *Attorney.*

[File endorsement omitted.]

[Endorsement on cover:] File No. 34412. E. Arkansas, D. C. U. S. Term No. 281. United States of America, appellant, vs. D. D. Adams. Filed July 31, 1929. File No. 34412.

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No. 281

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES OF AMERICA, APPELLANT

v.

D. D. ADAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

STATEMENT OF JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 281

UNITED STATES OF AMERICA, APPELLANT

v.

D. D. ADAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, appellant submits herewith its statement showing the basis of this Court's jurisdiction in the above-entitled cause.

A

STATUTORY PROVISIONS

The statutory jurisdiction of this Court to review by direct appeal the judgment here complained of is found in the Act of March 2, 1907 (c. 2564, 34 Stat. 1246; U. S. C. Title 18, Sec. 682), otherwise known as the Criminal Appeals Act, and Section 238 of the Judicial Code, as amended by the

Act of February 13, 1925 (c. 229, 43 Stat. 936, 938; U. S. C. Title 28, Sec. 345).

B

DATES OF JUDGMENT AND APPLICATION FOR APPEAL

The judgment to be reviewed was entered June 4, 1929. (R. 24–25.)[1] Petition for appeal was filed on July 1, 1929 (R. 29), and allowed the same day (R. 28).

C

NATURE OF THE CASE

The indictment charges appellee with making a false entry in the books of a member bank of the Federal Reserve System purporting to show that a certain deposit of funds had been made in said bank, when no such funds had been deposited. (R. 3–4.) Appellee filed a "plea of former jeopardy and former acquittal" alleging that he had theretofore been tried and acquitted under an indictment charging him with making a false entry purporting to show that a certain sum had been remitted to another bank when in truth no such sum had been remitted. The plea thereupon alleged, in substance, that both entries were based upon a single draft, and, therefore, constituted but one offense; that the evidence in the case tried is that which would be required to convict under the pending indictment.

[1] All references to the record are to the pages of the typewritten record as prepared by the Clerk of the District Court. The record has not yet been printed.

(R. 8–10.) The court sustained the plea and ordered the indictment dismissed upon the ground—

> that there can be but one prosecution for false entries based upon any single draft or check passing through a bank. (R. 24–26.)

D

CASES SUSTAINING JURISDICTION

United States v. *Thompson*, 251 U. S. 407.
United States v. *Oppenheimer*, 242 U. S. 85.
United States v. *Barber*, 219 U. S. 72.
United States v. *Goldman*, 277 U. S. 229.

CHARLES E. HUGHES, Jr.,
Solicitor General.
O. R. LUHRING,
Assistant Attorney General.
HARRY S. RIDGELY,
Attorney.

AUGUST, 1929.

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FILE COPY

No. 281

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES OF AMERICA, APPELLANT

v.

D. D. ADAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 281

UNITED STATES OF AMERICA, APPELLANT

v.

D. D. ADAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 13) has not been reported.

JURISDICTION

The judgment to be reviewed was entered on June 4, 1929. (R. 12.) Appeal was petitioned for on July 1, 1929, and allowed the same day (R. 14), pursuant to the provisions of the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C. Title 18, Sec. 682). Statement of jurisdiction

was filed in compliance with Rule 12 of this Court on August 24, 1929, and on October 28, 1929, this Court found that probable jurisdiction had been shown.

QUESTION PRESENTED

The sole question raised is whether an acquittal under an indictment charging the making in the books of a bank of a false entry purporting to show that $75,000 had been remitted to an outside bank, is a bar to a prosecution under an indictment charging the making of a false entry in a different book purporting to show that $75,000 had been deposited in a customer's account, both entries, in the view of the court below, being "based upon the same draft."

STATUTE INVOLVED

Section 5209 R. S. as amended by the Act of September 26, 1918, c. 177, 40 Stat. 967, 972 (U. S. C. Title 12, Sec. 592), reads as follows, so far as pertinent:

> Any officer, director, agent, or employee of any Federal reserve bank, or of any member bank as defined in the Act of December twenty-third, nineteen hundred and thirteen, known as the Federal Reserve Act, who * * * makes any false entry in any book, report, or statement of such Federal reserve bank or member bank, with intent in any case to injure or defraud such Federal reserve bank or member bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of

such Federal reserve bank or member bank, or the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of such Federal reserve bank or member bank, or the Federal Reserve Board; * * * shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States shall be fined not more than $5,000 or shall be imprisoned for not more than five years, or both, in the discretion of the court.

STATEMENT

Appellee, an officer of the Union Bank & Trust Company of Batesville, Ark., a member bank of the Federal reserve system, was indicted in the District Court of the United States for the Eastern District of Arkansas upon the charge of making a false entry in the Individual Ledger of his bank, purporting to show that on June 30, 1926, the firm of which he was apparently a member, had made a deposit of seventy-five thousand dollars in said bank, when in truth no such deposit was made. (R. 1–2.) He thereupon filed a "plea of former jeopardy and former acquittal," alleging that he had previously been tried and acquitted under an indictment charging him with making on the same day a further false entry in a different book of the bank, viz, the Journal Ledger and Daily Balance Book, purporting to show that on June 30, 1926, his bank had made a remittance of seventy-five thousand dollars to an out-of-town bank, when in truth

no such remittance was made. (R. 2, 3.) After reciting the above facts, the plea alleged that both entries were based upon a single draft, and each indictment charge would require the same evidence. (R. 2–12.) No evidence was offered in support of the plea except the former indictment and the judgment of acquittal thereon. The court sustained the plea (R. 12–13) upon the ground (R. 13)—

> that there can be but one prosecution for false entries based upon a single draft or check passing through a bank, even though several different entries are made in the different books of the bank, provided all relate to the same basic check or draft.

SUMMARY OF ARGUMENT

Section 5209 of the Revised Statutes, as amended, prohibits and penalizes "any false entry in any book, report, or statement" of the bank. This language is unambiguous. The Act does not punish fraudulent transactions but "any false entry." It does not define or punish false entries by groups or series. One false entry may be successfully used to cover up another culminating in a fraudulent transaction. Acquittal which may be thus made possible, on an indictment involving the fraudulent transaction, should not preclude inquiry into and prosecution for such a false entry. The integrity of the National banking system requires that the statute be given effect according to its terms.

The two indictments here involved charge unrelated entries and transactions. The former, under which the defendant was acquitted, charged a false entry to create an ostensible creditor-debtor relation between the Union Bank of Batesville, Arkansas, and the Federal Bank & Trust Company of Little Rock, Arkansas; the indictment at bar charges a false entry to create an ostensible debtor-creditor relation between the Union Bank and a depositor. The evidence required to prove the one is not required to prove the other. As the two indictments relate to independent debtor-creditor relations entered in different books, they charge two distinct offenses.

ARGUMENT

I

THE STATUTE INVOLVED MAKES EACH ENTRY AN OFFENSE

The statute upon which the indictment in the case at bar is bedded, punishes any bank official or employee who "makes any false entry in any book, report, or statement" of the bank. The language of the statute is unambiguous and should be given full effect. As said by this Court in *United States* v. *Koenig Coal Co.*, 270 U. S. 512, 520—

> The general rule that criminal statutes are to be strictly construed has no application when the general purpose of the legislature is manifest and is subserved by giving the words used in the statute their ordinary meaning and thus covering the acts charged.

Similarly in *Donnelley* v. *United States,* 276 U. S. 505, 512, this Court said:

> The rule that penal statutes are to be strictly construed in favor of persons accused is not violated by allowing the language to have its full meaning where that construction is in harmony with the context and supports the policy and purposes of the enactment. *United States* v. *Hartwell,* 6 Wall. 385, 395. *United States* v. *Wiltberger,* 5 Wheat. 76, 95.

The precise point here involved appears not to have been decided in any reported case, but we submit that under the construction of the statute in analogous cases the judgment below should be reversed.

In *Bower* v. *United States,* 296 Fed. 694 (certiorari denied, 266 U. S. 601), the defendant was charged in separate counts with making several false entries in one report. He contended that only one crime was committed, but the court rejected that view, saying (p. 695):

> The statute prohibits the making of any false entry, not the making of a false report, and each false entry constitutes a separate and distinct crime, even though the several entries are made on the same day and contained in the same statement or report. *Morse* v. *United States,* 174 Fed. 539, 552, 98 C. C. A. 321, 20 Ann. Cas. 938.

Any rule which would permit but one prosecution for dissimilar false entries in different books

of the bank, on the theory apparently adopted by the court below that they were based upon a single transaction would seem equally to forbid more than one prosecution for a group of false entries made at the same time in but one report, and yet the contrary was held in the *Bower case, supra.* The statute violated says nothing about basic checks or drafts, but it does undertake to punish "any false entry in any book, report, or statement." The entry charged in the indictment at bar may have been essential to cover up the falsity of the separate and distinct entry charged in the first indictment against defendant. It is inconceivable that Congress intended that a way should thus be left open for a defendant to cover up one false entry with another with impunity merely because both false entries relate to a single transaction. The maintenance of the integrity of the Federal banking system would seem to require that each false entry even though based upon a single transaction, should be treated as a separate offense. Such construction effectuates the purpose of the legislation, and is plainly within the scope of the language employed.

The principle applied in *In re Henry,* 123 U. S. 372, is applicable here. In that case the statute involved punished the placing of "any letter or packet in any post office" in execution of any scheme or artifice to defraud. The indictment charged each letter so placed in the mails as a sepa-

rate offense. In upholding the validity of the judgment of conviction on each charge, this Court said (p. 374):

> As was well said by the district judge on the trial of the indictment, "the act forbids, not the general use of the post-office for the purposes of carrying out a fraudulent scheme or device, but the putting in the post-office of a letter or packet, or the taking out of a letter or packet from the post-office in furtherance of such a scheme. Each letter so taken out or put in constitutes a separate and distinct violation of the act." It is not, as in the case of *In re Snow*, 120 U. S. 274, a continuous offence, but it consists of a single isolated act, and is repeated as often as the act is repeated.

That the ruling in the *Henry case*, just quoted from, was not rested upon a principle of construction applicable only to the statute there considered, but was based upon a principle applicable to any statute which forbids individual acts as does the statute in the case at bar, rather than a course of conduct as in *In re Snow*, 120 U. S. 274, is shown by the fact that in *Badders* v. *United States*, 240 U. S. 391, 394, which was also a post-office fraud case, this Court cited *Ebeling* v. *Morgan*, 237 U. S. 625, which arose under an entirely different statute.

In the *Ebeling case* this Court said (pp. 629–631):

> Section 189, under which this indictment was prosecuted, provides:

"Whoever shall tear, cut, or otherwise injure any mail bag, pouch, or other thing used or designed for use in the conveyance of the mail, or shall draw or break any staple or loosen any part of any lock, chain, or strap attached thereto, with intent to rob or steal any such mail, or to render the same insecure, shall be fined not more than five hundred dollars, or imprisoned not more than three years, or both."

Reading the statute with a view to ascertaining its meaning, it is apparent that it undertakes to make an offender of anyone who shall cut, tear, or otherwise injure any mail bag, or who shall draw or break any staple or loosen any part of any lock, chain or strap attached thereto, with the felonious intent denounced by the statute. These words plainly indicate that it was the intention of the lawmakers to protect each and every mail bag from felonious injury and mutilation. Whenever any one mail bag is thus torn, cut or injured, the offense is complete. Although the transaction of cutting the mail bags was in a sense continuous, the complete statutory offense was committed every time a mail bag was cut in the manner described, with the intent charged. The offense as to each separate bag was complete when that bag was cut, irrespective of any attack upon, or mutilation of, any other bag. The words are so plain as to require little discussion or further amplification to ascertain their meaning. The separate counts each charged by its distinctive number the sepa-

rate bag and each time one of them was cut there was, as we have said, a separate offense committed against the statute. * * *

The case is not like those charges of continuous offenses where the crime is necessarily, and because of its nature, a single one, though committed over a period of time. * * *

As we interpret the statute, the principle applied in *Gavieres* v. *United States,* 220 U. S. 338, is applicable, where this court held that, when in the same course of conduct, and upon the same occasion, certain rude and boisterous language was used, and an officer insulted, two offenses were committed, separate in their character, and this, notwithstanding the transaction was one and the same. The principle stated by the Supreme Judicial Court of Massachusetts, in *Morey* v. *Commonwealth,* 108 Massachusetts, 433, was applied, where it was held that a conviction upon one indictment would not bar a conviction and sentence upon another indictment, if the evidence required to support the one would not have been sufficient to warrant the conviction upon the other without proof of an additional fact, and it was there declared that a single act might be an offense against each statute, if each required proof of an additional fact which the other did not, and that conviction and punishment under one does not exempt the defendant from conviction and punishment under the other statute.

> So here, proof of cutting and opening one sack completed the offense, and although defendant continued the operation by cutting into other sacks, proof of cutting one sack would not have supported the counts of the indictment as to cutting the others; nor was there that continuity of offense which made the several acts charged against the defendant only one crime.

The statute in the case at bar quite as much as the statutes dealt with in the cases above reviewed, is so framed as to indicate with clearness a legislative purpose to punish individual acts and not a course of conduct, from which it follows that each false entry constitutes a separate offense.

It is well settled that Congress may prohibit and punish separately each step leading to the consummation of a transaction, and also the completed transaction. *Albrecht* v. *United States,* 273 U. S. 1; *King* v. *United States,* No. 70, decided by this Court on October 28, 1929.

II

THE INDICTMENTS INVOLVE INDEPENDENT TRANSACTIONS

It is submitted further that the court's conclusion "that there can be but one prosecution for false entries based upon any single draft or check passing through a bank, even though several entries are made in the books of the bank, provided all relate to the same basic check or draft," apart from any question as to its soundness as a legal proposi-

tion, has no proper application to the case at bar. The assumption of fact that the two indictments are "based upon the same draft" is contradicted by the language of the plea and the indictment assailed. On the face of the two indictments the false entries charged are wholly unrelated transactions each complete in itself. The former indictment charged a false and fraudulent entry to create a debtor-creditor relation between the Union Bank & Trust Company of Batesville, Arkansas, and the Federal Bank & Trust Company of Little Rock, Arkansas. (R. 5.) The indictment at bar charges a false and fraudulent entry to create a debtor-creditor relation between the Union Bank & Trust Company and D. D. Adams and Sons. (R. 1–2.)

The former indictment does not charge as an ingredient of the offense the fraudulent deposit charged in the indictment at bar. No evidence as to said deposit was necessary to make out a case under the former indictment, which involved a remittance of $75,000 of the general assets of the bank, which remittance it was charged was not in fact made. There is nothing in this record to contradict the presumption that the $75,000 ostensible deposit remained on the books of the bank subject to the check of D. D. Adams and Sons long after the remittance of $75,000 had been made to the Little Rock bank; indeed, still stands there. We submit that the evidence required to make out a case under

the former indictment is not required or necessary to make out a case under the indictment at bar. As the two indictments relate to two distinct debtor-creditor relations, they charge two distinct offenses.

The allegation of the plea that the Government must rely on the same evidence in both cases is erroneous on its face and a mere conclusion of law of the pleader.

CONCLUSION

It is respectfully submitted that the judgment below should be reversed.

CHARLES E. HUGHES, Jr.,
Solicitor General.
O. R. LUHRING,
Assistant Attorney General.
GEORGE C. BUTTE,
Special Assistant to the Attorney General.
HARRY S. RIDGELY,
Attorney.
CHARLES P. SISSON,
Assistant Attorney General,
Of Counsel.

DECEMBER, 1929.

U. S. GOVERNMENT PRINTING OFFICE: 1929

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IN THE

Supreme Court of the United States

FEBRUARY TERM, 1930.

No. 281.

UNITED STATES OF AMERICA,
Appellant,

vs.

D. D. ADAMS.

BRIEF FOR ADAMS.

T. H. CARAWAY,
Attorney for Adams.

COLEMAN AND REEDER,
Associated Attorneys.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

FEBRUARY TERM, 1930.

No. 281.

UNITED STATES OF AMERICA,
Appellant,

vs.

D. D. ADAMS.

BRIEF FOR ADAMS.

STATEMENT.

The judgment of the District Court of the Eastern District of Arkansas, herein sought to be reversed, grew out of an indictment in said court of D. D. Adams charged with making or causing to be made a false entry touching the depositing on June 30, 1926, of a draft for $75,000 in the Union Bank & Trust Co., of Batesville, Arkansas, a member of the Federal Reserve System.

The indictment alleged that this was a false entry inasmuch as it was contended that Adams had no reasonable expectation that the draft would be honored.

The statute, Section 5209, Revised Statutes, as amended by the Act of September 26, 1918, Chapter 177, makes the making of a false entry with intent to injure, defraud or deceive certain officers and persons therein mentioned, a criminal offense. The intent to defraud, injure or deceive is the essence of the offense. A false entry without such an intent is not a crime, however false the entry may be.

On a trial on such a charge, if the entry be proved or admitted, the sole question to be submitted to a jury is one of intent. If the act were not accompanied by such an intent the defendant is not guilty.

In the case at bar such was the fact. Adams, the president of said bank, deposited on June 30, 1926, in said bank, a draft for $75,000 and took credit therefor. The draft was not honored, and subsequently was charged back to the account of Adams.

For this act Adams was indicted, tried and acquitted in said court.

The sole difference between the indictment on which the defendant was tried and acquitted and the one to which the plea of former jeopardy and former acquittal was sustained is that the indictment on which he went to trial charged that the false entry was made in a book of said bank entitled "Journal, ledger, and daily balance book", and this one, in another book of the same bank entitled 'individual ledger."

The plea of former jeopardy and former acquittal urged against the indictment before the court, alleged that the two indictments grew out of a single act by Adams; that is, the drawing an depositing in said bank

of said draft for $75,000, and contains, among other averments, the following:

"That evidence was introduced by the United States in said former trial whereby it was shown, and the United States relied for a conviction, that the said D. D. Adams did draw a certain draft on said 30th day of June, 1926, signed by the Dixie Cotton Oil Company, by D. D. Adams, on the Interstate Trust & Banking Company, of New Orleans, La., and take credit upon the books of said company for said sum of $75,000, and charge same to the Federal Bank & Trust Company, of Little Rock, all of said charges and credits and said draft being the identical charges, credits, and drafts, and all being based upon the single act of placing said draft in the hands of a cashier or assistant cashier of said Union Bank & Trust Company on said 30th day of June, 1926, upon all of which the Government must now rely for a conviction herein, and said charge being the same identical charge as that contained in the present indictment, and the evidence required to convict in this case being the same identical evidence heretofore introduced and relied upon by the Government, and said indictment being based upon the same identical section of law, to wit, Revised Statutes of the United States, Sec. 5209, Sept. 26, 1918 (40 Stat. 972).

"That before the jury would be authorized to convict the defendant in this case of the crime of making the false entry charged, it would first be necessary for it to hear and consider the same identical evidence submitted to the jury in the former trial and to draw different and opposite conclusions from said evidence to that reached by the jury in the former trial.

"And defendant here tenders proof of all of the al-

legations and facts set forth and alleged herein and prays that upon a hearing of said evidence that the indictment herein be quashed and that defendant be discharged." (Record, pages 3-4)

To this plea the Government interposed a verbal demurrer.

No entry of that appears of record. The judgment of the Court, however, does recite that this plea was submitted to the Court with certain exhibits and on **"argument of counsel in support of said plea, as well as the District Attorney in opposition thereto, and the Court being well and sufficiently advised as to the law arising upon said plea."** (R. 12.) This makes it perfectly apparent that the allegations of fact in the plea were conceded by the Government to be true and **"that before the jury would be authorized to convict the defendant in this case of the crime of making the false entry charged it would first be necessary for it to hear and consider the same identical evidence submitted to the jury in the former trial and to draw different and opposite conclusions from said evidence to that reached by the jury in the former trial."**

The sole question then for determination by this Court is whether the recording of the same item on the same day in two separate books of the same bank with the same intent constitutes, if an offense at all, *one offense or two offenses.*

The Government insists that each time this item was recorded in a separate book of the bank a separate offense was committed. The defense disputes this construction.

ARGUMENT.

This case arises out of Section 5209 R. S. as amended by the Act of September 26, 1918, c. 177, 40 Stat. 967, 972 (U. S. C. Title 12, Sec. 592).

Learned counsel for the Government argues that this statute should be liberally construed and cites cases alleged to support that contention.

In Re McKnight v. United States, 111 Federal Reports, 735, the Court held the contrary and therein said: "The statute so far as it relates to reports and book entries is certainly highly penal, and should be strictly construed."

In further support of its contention the Government cites, In re Snow, 120 U. S. 274.

In that case the court held, and properly so, that the entry of each separate item in any book of a bank, if a false entry with the intent prescribed by the statute, constitutes a separate offense.

As an illustration, when Adams drew that draft for $75,000, and took credit for it, on the same day and the same time had he drawn another draft for $10,000, and taken credit for it, the entries made recording these acts, if they were false entries within the meaning of the statute, would have been two offenses, one for the recording of each of the drafts.

But the Court did not hold that the recording of the one item of the one draft was a separate offense for each book of the bank in which that item was recorded and, therefore, it is not in point.

Likewise, counsel for the Government cites *In re Henry*, 123 U. S. 372, in which the mailing of separate letters was held to constitute separate offenses.

It did not hold, however, that the crime was multiplied by each time one letter was handled by a clerk in

the Post Office, such as placing it in a bag, transmitting it through the mails and removing it from the bag. To support the Government's contention here the Court would have had to have held that such separate handlings constituted separate offenses. But it made no such holding.

Learned counsel for the Government also cites *Ebbling v. Morgan,* 237 U. S. 625.

Here the Court was construing a statute which made it a criminal offense, among other things, to cut or tear a mail bag with the intent to steal its contents. The Court in the case cited held that the cutting into each separate bag to steal its contents was a separate offense.

The correctness of that holding is obvious, because each bag contained separate articles, and the cutting into a bag to steal its articles enclosed therein constitutes the offense.

The Court would have had to have held, to make that case an authority to support the Government's contention here, that each rent or cut in the sack with the prescribed intent constituted a separate offense, so that if one should make a dozen slashes in one mail bag to enable him to steal the contents of that bag he would have committed a dozen offenses. The Court made no such ruling.

Other cases are discussed. Such as *Albrecht v. U. S.,* 273, and *Gavieres vs. United States,* 220 U. S. 338, is also cited as an authority. The cases dealing with that statute and cited by the Government can furnish no guide for the construction of the statute before the Court. There is nothing in common between the two. The statute construed had a dual object in view—to preserve the public peace and to protect an officer of

the United States from insult. Of course, a single act might violate both provisions of that statute. The statute, however, before the Court has but one object in view—the protection of banks. So a construction of the former statute can shed no light upon the true intent of Congress in passing the latter. No time, therefore will be devoted to the analyzing of these cases.

THE PLEA OF FORMER JEOPARDY AND FORMER ACQUITTAL.

> "* * * it seems to us very clear that where * * * a person has been tried and convicted for a crime which has various incidents included in it, he can not be a second time tried for one of those incidents without being twice put in jeopardy for the same offense."
>
> *Re Nielsen*, 131 U. S. 176, 188.

In the case at bar the two incidents are these:

The recording of the same item (that is, the draft for $75,000.00), the same day, in the same bank was posted in two books, one the "journal ledger and daily balance book" and the other the "individual ledger," to record the same item (that is the draft), and necessarily reflect the same intent. The same statute was involved in the two indictments, the same draft, the same bank, the same person and the same act upon the part of Adams, and the same intent.

To the following statement of the law all authorities agree:

If all the elements of either crime are included in the other a plea of former jeopardy will lie. In other words, if on proof of either indictment the defendant might have been found guilty of the other, the plea is good. If the defendant could have been

found guilty under the indictment charging that the entry was made in "the journal ledger and daily balance book" on the proof which would be necessary to sustain the indictment on the same entry in the "individual ledger," the plea is good.

The first indictment alleged that Adams drew a draft with an intent to deceive, cheat or defraud, and deposited it in the Union Bank & Trust Company of Batesville, Arkansas, and that this was entered in a book kept for that purpose and designated "journal ledger and daily balance book." If this act had been proved, Adams would have been found guilty under that indictment.

The indictment at bar alleges the doing of everything that was charged in the first indictment except that the entry was made in a book designated "individual ledger."

It follows that to support the allegations in either indictment, proof of every fact from which the jury would have to deduce its finding of Adams' intent would have to be submitted upon the trial of either indictment. In other words, there was not a single fact or circumstance connected with the entire transaction that is not the same fact or circumstance connected with the recording of this item in either book, except merely the name of the book itself. There is not a single thing that Adams did or caused to be done that is not common to both indictments. Since that is so, all authorities agree the plea will lie.

But our argument does not have to go so far as this. The Nielsen case, 131 U. S. 176, 188 (*supra*) held that a person who has been tried for a crime holding various incidents "cannot be a second time tried for one of those incidents without being twice put in jeopardy for the same offense."

The Neilsen case has never been overruled, and has been cited with approval down to 1925.

Thus, even though it may be conceded that the proof of the indictment charging that the entry was made in the "Journal ledger and daily balance book" would not necessarily include proof that this same entry was made in the "individual ledger," yet every element, except the book in which it is entered, is present in both and would be proved by exactly the same evidence.

In Bishop on Criminal Law, 9th Edition, Section 991, page 774, appears the following:

> "* * * the constitutional provision * * * should be liberally construed,"

as to

> "* * * the parts in his (defendant's) favor."

Further, the same authority, page 775, Section 1051:

> "When, in Reason, Offense Same.—Just principle seems to sustain the following: They are not the same when (1) the two indictments are so diverse as to preclude the same evidence from maintaining both; or when (2) the evidence to the first and that to the second relate to different transactions, whatever be the words of the respective allegations; or when (3) each indictment sets out an offense differing in all its elements from that in the other, though both relate to one transaction,—a proposition of which the exact limits are difficult to define; or when (4) some technical variance precludes a conviction on the first indictment, but does not appear on the second."

In this case none of these propositions would seem to apply. They are not so diverse as to preclude the

same evidence, nor do they relate to different transactions. The indictments do not set out offenses different in all elements, one from the other, and the question of technical variance does not apply.

The author further says:

> "The offenses are the same whenever evidence adequate to the one indictment will equally sustain the other. Moreover, if the two indictments set out like offenses and relate to one transaction, yet if one contains more of criminal charge than the other, but upon it there could be a conviction for what is embraced in the other, the offenses, though of different names, are, within our constitutional guaranty, the same."

In *Wharton on Criminal Law*, 2nd Edition, (1912), page 507, appears the following:

> "Part of a single crime, prosecution for and conviction or acquittal of, is a bar to any subsequent prosecution based on the whole or any part of the crime charged." (Citing State v. Cross, 101 N. C. 770; State v. Emory, 68 Vt. 109; State v. Emory, 59 Vt. 84.)

In the latter case this appears:

> "The proper test is: Was the matter set out in a second indictment admissible as evidence under the first indictment where a conviction should have been properly maintained upon such evidence? If the answer is yes, then the pleading is sufficient; otherwise, it is not. Acquittal of a charge of crime is a bar to a subsequent prosecution for the same offense under a different name, in all cases where the accused might have been found guilty and sentenced on the offense charged in a later indictment

under the former prosecution. Conviction or acquittal in one offense is a bar to a prosecution in another in all those cases where the later offense charged is a necessary element in and constitutes an essential part of the former."

The same test is applied in ex parte Henkes, 260 Fed. 276, 282:

"It is a general rule if two indictments set out like offenses and relate to one transaction, yet if one contains more of criminal charge than the other, but upon either there would be a conviction for what is embraced in the other, the offenses, though of different names, are within our constitutional guaranty the same. Fox v. State, 50 Ark. 528, 8 S. W. 836; State v. Cooper, 13 N. J. Law, 361, 25 Am. Dec. 490; 1 Chitty, Crim. Law, 455.

Offenses are the same, whenever evidence adequate to the one indictment will equally sustain the other. United States v. Lee, 4 Cranch, C. C. 446, Fed. Cas. No. 15586; United States v. Miner, 11 Blatchf. 511, Fed. Cas. No. 15780; Holt v. State, 38 Ga. 187; State v. James, 63 Mo. 570; Wright v. State, 17 Tex. App. 152; In re Nielsen, 131 U. S. 176; 9 Sup. Ct. 672, 33 L. Ed. 118; United States v. Chouteau, 102 U. S. 603; 26 L. Ed. 246; Coffey v. U. S., 116 U. S. 436."

AN INTENT ON THE PART OF APPELLEE TO INJURE, DEFRAUD OR DECEIVE IS AN ESSENTIAL INGREDIENT COMMON TO THE OFFENSE CHARGED IN BOTH INDICTMENTS AND RESTS UPON THE SAME EVIDENCE. APPELLEE WAS ACQUITTED OF IT IN THE FORMER CASE AND THEREFORE CANNOT BE PLACED ON TRIAL AGAIN.

It will be noted that, under the terms of the statute, it is not enough merely to charge that a false entry was made in a book, record, report or statement of a Federal reserve or member bank. That alone does not constitute a crime. An intent to injure, defraud or deceive a Federal reserve bank, a member bank, the Comptroller of the Currency, an agent or examiner, or certain others enumerated, is an essential element to the crime itself. Without such intent, there is no offense. Indeed, intent is the very essence of the crime. So, in order to allege an offense, it was necessary to charge in the former indictment that in connection with the transaction there involved, the defendant entertained such intent. That averment was made in that indictment. The defendant was tried upon it and the jury found that no such purpose existed and consequently returned a verdict of acquittal. That intent is expressly alleged in his indictment. The same draft is involved. The same transaction is relied upon by the Government, that is to say, one draft, one drawer, one drawee, one amount, the same day and date—one set of facts from which it must be determined whether the transaction was valid or faked. In other words, relating to the identical transaction, it must be determined whether appellee, in connection with that draft,

that drawer, that drawee, that amount and that set of facts, intended to injure, defraud or deceive. The two entries, one relied upon in the former case and the other here, were contemporaneously made and related to the same transaction. Can it be argued that, at the time one of these entries was made appellee had one purpose of mind and a different purpose when the other entry was made? The condition of appellee's mind, that is to say whether he knew the transaction to be faked and consequently intended to injure, defraud or deceive, was the essence of the former charge. It is the essence of this charge. That purpose must be gleaned from and decided upon the same facts. Those facts were adduced upon the former trial, the Government contending that he intended to injure, defraud or deceive; appellee contending otherwise. Those facts must necessarily be adduced and relied upon here, the Government and appellee making the same respective contentions. The very essense is the same and must be concluded from the identical facts.

The same intent, of course, accompanied the entry of this draft in the "journal ledger and daily balance book" and the "individual ledger" since each grew out of the one *act of Adams*. Two prosecutions cannot grow out of the one criminal intent.—Munson v. McClaughry, 198 Fed. 72 (8th Circuit 19123), the following rule seems to have been approved:

> "Whenever in any criminal transaction a felonious intent is essential to render it a crime and without proof of which no conviction can be had, two informations founded upon the same intent cannot be maintained."

It is true that in Stevens v. McClaughry, 207 Fed. 18 (8th Circuit) appears the following:

> "Two or more separate offenses which are committed at the same time and which are parts of a single continuing criminal act, inspired by the same criminal intent which is essential to each offense are susceptible to punishment."

This was known as the "Same Transaction Rule", and was applied chiefly in the Eighth Circuit. That doctrine was refuted in U. S. v. Hampden, 294 Fed. 345, 347, (1923) when the Court said:

> "This doctrine, however, and the decisions in which it was expressed, were expressly rejected by the Supreme Court in Morgan v. Devine, 237 U. S. 632."

Likewise after referring to various other cases the Court said in U. S. v. Hampden in the words of the Nielsen case,

> "It is true that where a person is tried and convicted of a crime which has various incidents included in it, he cannot again be tried and punished for an offense consisting of one or more of such incidents, for this would be double punishment".

Then in conclusion, suppose that due to a difference in the system of bookkeeping, one bank would make seven entries regarding a given draft or other transaction, and another bank would make only one entry regarding the same kind of a transaction, draft or check. Can it be argued, if such transaction, check or draft is not bona fide but faked, the officials of the former bank could be indicted, tride, convicted and sentenced seven times, while the officials of the other bank could suffer only one incarceration, the two transactions being exactly alike? If so, although Congress attempted to

fix the maximum punishment for the offense not to exceed five years imprisonment or a fine of $5000, or both. Yet if the government's contention be correct and each book in which the transaction is recorded constitutes a separate offense it would necessarily follow that each day this transaction was re-recorded, likewise would be an offense and a penalty of life imprisonment might well be incurred by a single act of the defendant. Obviously, Congress had no such thought in mind.

The judgment of the Court sustaining the plea of former jeopardy and former acquittal should be affirmed.

Respectfully submitted,

T. H. CARAWAY,
Attorney for Adams.

COLEMAN AND REEDER,
Associated Attorneys.

CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 282

UNITED STATES OF AMERICA, APPELLANT

vs.

D. D. ADAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

FILED JULY 31, 1929

(34413)

SUPREME COURT OF THE UNITED STATES

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

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3 In United States District Court, Eastern District of Arkansas

Section 5209, U. S. R. S.

Indictment

Filed April 3, 1928

In the District Court of the United States in and for the Eastern District of Arkansas, at the April term thereof, A. D. 1928, held in the western division of said district.

The grand jurors of the United States, impaneled, sworn, and charged to inquire into offenses committed in the eastern district of Arkansas, at the term aforesaid of the court aforesaid, on their oaths present:

That Drury D. Adams, Charles D. Metcalf, and Edwin Army Hodges, on or about the 23rd day of April, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents—to wit, that is, the said Drury D. Adams was president, the said Charles D. Metcalf was cashier, and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the Eighth Federal Reserve District, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; that they, the said Drury D. Adams, Charles D. Metcalf, and Edwin Army Hodges, so being president, cashier, and assistant cashier, respectively, of said member bank, then and there with intent on their part to injure and

4 defraud said member bank and to deceive the officers and directors of said Federal reserve bank and of said member bank, and the examine the affairs of said member bank, unlawfully, wilfully, and feloniously did make and cause to be made in a certain "Report of condition" of said Union Bank & Trust Company, at the close of its business on April 12, 1926, made to the said Federal Reserve Bank of St. Louis, Missouri, as required under the laws of the United States, a certain false entry, more particularly described as follows, to wit: In the division and space of the said "Report on

condition" under the heading "Resources" in line "2," following the written words and figures "Overdrafts—Secured, $6,072.66. Unsecured, $86.10," and in the money column to the right, with the heading "Dollars, cts." in the figures following, to wit: "6,158.76," which said entry then and there purported to show, and did in substance and effect indicate and declare, that the total amount of overdrafts in said member bank at the close of its business on the 12th day of April, 1926, was the sum of $6,158.76, when in truth and in fact the total amount of overdrafts in said member bank at the close of its business on the 12th day of April, 1926, was a different and much larger sum and amount, to wit—the sum and amount of $232,960.01—and said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams, Charles D. Metcalf, and Edwin Army Hodges then and there well knew, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count II

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That Drury D. Adams, Charles D. Metcalf, and Edwin Army Hodges, on or about the 10th day of January, 1927, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit—that is, the said Drury D. Adams was president, the said Charles D. Metcalf was cashier, and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and
5 there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which the Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the Eighth Federal Reserve District, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"—that they, the said Drury D. Adams, Charles D. Metcalf, and Edwin Army Hodges, so being president, cashier, and assistant cashier, respectively, of said member bank, then and there with intent on their part to injure and defraud said member bank and to deceive the officers and directors of said Federal reserve bank and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, and feloniously did make and cause to be made in a cer-

tain "Report of condition" of said Union Bank & Trust Company, at the close of its business on December 31, 1926, made to the said Federal Reserve Bank of St. Louis, Missouri, as required under the laws of the United States, a certain false entry, more particularly described as follows, to wit: In the division and space of the said "Report of condition" under the heading "Resources" in line "12," following the written words "Due from banks (other than Federal reserve banks), bankers, and trust companies in the United States," and in the money column to the right, with the heading "Dollars, cts." in the figures following, to wit: "138,409.52," which then and there purported to show, and did in substance and effect indicate and declare, that the total amount due said member bank from banks (other than Federal reserve banks), bankers, and trust companies in the United States, was the sum and amount of $138,409.52, when in truth and in fact the total sum and amount due said member bank at the close of its business on December 31, 1926, from banks (other than Federal reserve banks), bankers, and trust companies in the United States, was a different and much smaller
6 sum and amount, to wit: The sum and amount of $91,284.27, and that the said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams, Charles D. Metcalf, and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

(Signed) IRA J. MACK,
Assistant United States Attorney.

[File indorsement omitted.]

10 [Copy]

In United States District Court for the Northern Division of the Eastern District of Arkansas

No. 1113

UNITED STATES VS. D. D. ADAMS

Plea of former jeopardy and former acquittal

Filed June 3, 1929

Comes the defendant, D. D. Adams, and files this, his plea of "Former jeopardy" and "Former acquittal" of the charge embraced in Count II of the indictment herein, and in support of said plea he alleges:

The said Count II of the indictment herein charges that the defendant, D. D. Adams, C. D. Metcalf, and Edwin Army Hodges, were officers and agents of the Union Bank & Trust Company, of Batesville, Arkansas, and that with intent on their part to injure and defraud said bank and to deceive the officers and examiners appointed

under the laws of the United States to examine the affairs of said member bank, and to deceive the officers and directors of said Federal reserve bank, did unlawfully, wilfully, and feloniously make and cause to be made in a certain "Report of condition" of said Union Bank & Trust Company, at the close of its business on December 31st, 1926, made to the Federal Reserve Bank of St. Louis, Mo., as required under the laws of the United States, a certain false entry, more particularly described as follows, to wit: In the division and space of said Report of condition, under the heading "Resources," in line 12, following the written words, "Due from banks" (other than Federal reserve banks), bankers, and trust companies in the United States," and in the money column on the right with the heading "Dollars, cents" in the figures following, to wit—"$138,-
11 409.52"—which then and there purported to show, and did in substance and effect indicate and declare, that the total amount due said member bank from banks (other than Federal reserve banks), bankers, and trust companies in the United States, was the sum and amount of $138,409.52, when in truth and in fact the total sum and amount due said member bank at the close of its business on December 31st, 1926, from banks other than Federal reserve banks, was different and much smaller sum and amount, to wit—the sum and amount of $91,284.27—and that the said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said D. D. Adams, Charles D. Metcalf, and Edwin Army Hodges then and there well knew, etc.

That heretofore—to wit, on July 9th, 10th, and 11th, 1928—this defendant had been tried before a jury duly selected and empanelled for that purpose in this, the District Court of the United States, for the Northern Division of the Eastern District of Arkansas, a court of proper and competent jurisdiction, under an indictment theretofore returned against him, charging him with irregularities and crimes growing out of the same items which constitute the difference in the figures above quoted, or $47,125.25, said irregularities and crimes being charged in indictment numbered 1116 in this court, as follows:

That said indictment numbered 1116 upon which defendant has been tried as aforesaid, in Count No. III thereof, charges that the said Drury D. Adams and Edwin Army Hodges, being officers and agents of the Union Bank & Trust Company, a banking corporation and a member of the Federal Reserve Bank of St. Louis, with intent on their part to injure and defraud said member bank, and to deceive the officers and directors of the Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its banking business—that is to say, in the book and record known
12 and designated as the "journal, ledger, and daily balance"

book, on the page in said book dated "Aug. 23, 1926," on the debit side of said page under the heading "Items" in the division and space of said page for the account of "Fid. Bk. & Tr. Co.," a copy of said entry being as follows:

"D. D. Adams & Sons, 10 000."
"By D. D. A."

which entry then and there purported to show and did in substance and effect indicate and declare that on said 23rd day of August, 1926, said member bank had made a remittance of $10,000.00 to the Fidelity Bank & Trust Co., of Memphis, Tenn., whereas in truth and in fact no such remittance of $10,000.00 was made on said date by said member bank to the said Fidelity Bank & Trust Co., of Memphis, Tenn., and said Fidelity Bank & Trust Company was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustified, unwarranted, and false, etc.

And said indictment numbered 1116 upon which the defendant has been tried as aforesaid, in Count VI thereof, charges that the said D. D. Adams and Edwin Army Hodges, as officers and agents of the Union Bank & Trust Company, of Batesville, Arkansas, a banking corporation and a member of the Federal Reserve Bank of St. Louis, Mo., did on the 8th day of March, 1927, and Count V thereof charges that they did, on the 5th day of October, 1926, with intent on their part to injure and defraud said member bank, and to deceive the officers and agents of said Federal Reserve Bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its business, that is to say, in a book and record of said member bank known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated March 9th, 1927 (in count No. VII), and on the page in said book dated "Oct. 25, 1926" (in Count V), on the debit side of said page, under the heading "Items," in the division and space of said page used for "Sundry banks (items in transit)," a copy of said item being as follows: "Hazen 27,125.25," which said entry then and there purported to show, and in substance and effect did indicate and declare
13 that on said respective dates said member bank had made a remittance of $27,125.25 to the Bank of Grand Prairie, and said Bank of Grand Prairie was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustifiable, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges then and there well knew, etc.

And said indictment No. 1116, upon which the defendant has been tried as aforesaid, in Count VII thereof, charges that the said Drury D. Adams and Edwin Army Hodges, on or about the 31st day of December, 1926, at Batesville, being officers and agents of the Union

Bank & Trust Company, a banking corporation, and a member of the Federal Reserve Bank of St. Louis, Mo., with intent on their part to injure and defraud the said member bank, and to deceive the officers and directors of the Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there being used by said member bank in transacting its banking business, known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated "Dec. 31, 1926," on the debit side of said page, under the heading "Items" in the division and space of said page used for the account of "Lib. Cent. Tr. Co.," a copy of said entry being as follows: "R 10000.00," which entry then and there purported to show and did in substance and effect indicate and declare that on said 31st day of December, 1926, said member bank had made a remittance of $10,000.00 to the Liberty Central Trust Company, of St. Louis, Missouri, whereas in truth and in fact no such remittance of $10,000.00 was made on said date by said member bank to the said Liberty Central Trust Company, and said Liberty Central Trust Company was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustified, unwarranted and false, etc.

That said three items of $10,000.00, $27,125.25, and $10,000.00 embraced, mentioned, and described in counts numbered III,
14 VI, V, and VII of said indictment No. 1116, upon which said defendant was tried as aforesaid, aggregated the sum of $47,125.25, which makes the exact difference in the two items and amounts mentioned in the present indictment, and defendant was found "not guilty" of all of the charges embraced in said indictment No. 1116, and "not guilty" of making false entries concerning said three items aggregating $47,125.25 aforesaid.

That evidence was introduced in said former trial relative to all of said items of $10,000, $27,125.25, and $10,000, and said evidence was the same evidence that the Government must now rely upon for a conviction herein, and said charges of false entries are the identical entries upon which the present indictment (Count II thereof) is based and the same entries upon which the Government must now rely upon as being false and unwarranted before it can convict herein, and the charge embraced in Counts III, VI, V, and VII of said former indictment being in effect the same charge as that embraced in Count II of the present indictment against him, and the evidence required to convict in this cause being the same identical evidence heretofore introduced and relied upon by the Government, and said indictment being based upon the same identical section of law, to wit, Revised Statutes of the United States, sec. 5209, Sept. 26, 1918, c. 177 (40 Stat. 972).

That before the jury would be authorized to convict the defendant in this case of making false entries it would first be necessary for

it to consider the same evidence submitted to the jury in the former trial and to draw different and opposite conclusions from said evidence to that reached by the jury in the former trial.

And defendant here tenders proof of all the allegations and facts set up and alleged herein, and prays that upon a hearing of said evidence that the indictment herein be quashed and that defendant be discharged.

(Signed) T. H. CARAWAY,
COLEMAN & REEDER,
Attorneys for Defendant.

[File indorsement omitted.]

15 *Exhibit to plea of former jeopardy and acquittal*

UNITED STATES OF AMERICA,
Eastern District of Arkansas.

In the District Court of the United States, in and for the Eastern District of Arkansas, at the April term thereof, A. D. 1928, held in the Western Division of said district.

The grand jurors of the United States, impanelled, sworn, and charged to inquire into offenses committed in the Eastern District of Arkansas, at the term aforesaid, of the court aforesaid, on their oaths present:

That Drury D. Adams and Army Hodges on or about the 30th day of June, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit—that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the eighth Federal reserve district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there,

16 with intent on their part to injure and defraud said member bank, and to deceive the officers and directors of said Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, fraudulently, and feloni-

ously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its said banking business—that is to say, in the book and record of said member bank known and designated as "journal, ledger, and daily balance" book, on the page in said book dated "Jun. 30, 1926," on the debit side of said page under the head "Items" in the division and space of said page used for the account of "Fed. Bk. & Tr. Co.," a copy of said entry being as follows:

"R. 75000,"

which said entry then and there purported to show and did in substance and effect indicate and declare that on said 30th day of June, 1926, said member bank had made a remittance of $75,000 to the Federal Bank & Trust Company of Little Rock, Arkansas, whereas in truth and in fact no such remittance of $75,000 was made on said date by said member bank to the said Federal Bank & Trust Company, and said Federal Bank & Trust Company was not then and there entitled to be charged therefor, and the said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges then and there well knew, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Count II

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That heretofore—to wit, on or about the 23rd day of August, 1926—the said Drury D. Adams and Edwin Army Hodges, at Batesville, in Independence County, in the State of Arkansas, were officers and agents to wit—that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Co., of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established, and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, which said Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the eighth Federal reserve district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively,

17

of said member bank, then and there, with intent on their part to injure and defraud said member bank, and to deceive the officers and directors of said Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, willfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its said banking business—that is to say, in the book and record of said member bank, known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated "Aug. 23, 1926," on the debit side of the said page under the heading "Items," in the division and space of said page used for the account of "Fed. Bk. & Tr. Co.," a copy of said entry being as follows:

"D. D. Adams and Sons, 15,000.
"By D. D. A."

18 which said entry then and there purported to show and did in substance and effect indicate and declare that on said 23rd day of August, 1926, said member bank make a remittance of $15,000.00 to the Federal Bank & Trust Company, of Little Rock, Arkansas, whereas in truth and in fact no such remittance of $15,000 was made on said date by said member bank to said Federal Bank & Trust Company, and said Federal Bank & Trust Company was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statutes in such case made and provided and against the peace and dignity of the United States.

Count III

And the grand jury aforesaid, upon their oaths, further present.

That Drury D. Adams and Edwin Army Hodges, on or about the 23rd day of August, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit—that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company, of Batesville, Arkansas, was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Co. was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the eighth Federal reserve district, in compliance with and under and by means of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in

the State of Arkansas, as a member of the Independence
19 Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there with intent on their part to injure and defraud said member bank, and to deceive the officers and directors of said Federal reserve bank and of said member bank, and the agents and examiners of said member bank, unlawfully, wilfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its banking business—that is to say, in the book and record of said member bank known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated "Aug. 23, 1926," on the debit side of said page for the account of "Fid. Bk. & Tr. Co.," a copy of said entry being as follows:

"D. D. and Sons, 10000.
"D. D. A.,"

which entry then and there purported to show and did in substance and effect indicate and declare that on said 3rd day of August, 1926, said member bank had made a remittance of $10,000.00 to the Fidelity Bank & Trust Co., of Memphis, Tennessee, whereas in truth and in fact no such remittance of $10,000.00 was made on said date by said member bank to the said Fidelity Bank & Trust Company, and said Fidelity Bank & Trust Company was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count IV

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

20 That Drury D. Adams and Edwin Army Hodges, on or about the 23rd day of August, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit—that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Tr. Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Missouri, in the

eight Federal reserve district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there with the intent on their part to injure and defraud said member bank, and divers other persons whose names are to the grand jurors unknown, and who were creditors, shareholders, and depositors of said member bank, certain of the moneys, funds, and credits of said member bank, then and there being to the amount and of the value of $25,000.00, the particular kind, description, numbers, amounts, and values of which said moneys, funds, and credits, respectively, this grand jury has no means of knowing, and can not therefore here set out, did unlawfully, fraudulently, feloniously, and wilfully misapply by unlawfully, fraudulently, feloniously,
21 and wilfully and not for any use, benefit or advantage of the said member bank, converting, and applying the same moneys, funds, and credits to the use, benefit, and advantage of the said Drury D. Adams and divers other persons to the grand jurors unknown, which said conversion and misapplication of the last-mentioned moneys, funds, and credits was then and there accomplished by the said Drury D. Adams and said Edwin Army Hodges in the following manner, that is to say, by virtue of the power of control, direction, and management which the said Drury D. Adams and Edwin Army Hodges as president and assistant cashier, respectively, of said member bank, then and there possessed and exercised over the moneys, funds, and credits of the same, the said Drury D. Adams and Edwin Army Hodges, at the time and place in this count aforesaid, with the intent aforesaid, did unlawfully, feloniously, fraudulently, knowingly, and wilfully misapply the sum of $25,000 of the moneys, funds, and credits of the said member bank to the payment of a certain draft, No. 8660, for the sum of $25,000.00, bearing date "Aug. 21, 1926," issued by said member bank by the said "E. A. Hodges, A. cashier," drawn on and payable to the order of the Liberty Central Tr. Co., of St. Louis, Mo., and which draft was paid by the said Drury D. Adams and Edwin Army Hodges out of the moneys, funds, and credits of the said member bank for the use, benefit, and advantage of the said member bank, whereby the said sum became then and there lost to the said member bank, and the moneys, funds, and credits of the same then and there were and are depleted in that amount, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Count V

That Drury D. Adams and Edwin Army Hodges, on or about the 5th day of October, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit—that is, the said Drury D. Adams was president and the said Edwin Army
22 Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Mo., in the eighth Federal reserve district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there with intent on their part to injure and defraud said member bank, and to deceive the officers and directors of said Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, wilfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its banking business—that is to say, in a book and record of said member bank known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated "Oct. 5th, 1926," on the debit side of said page under the heading "Items," in the division and space of said page used for the account of "Sundry banks (items in transit)," and being the eighth item thereof, a copy of said entry being as follows:

"Hazen 27,125.25"

which said entry then and there purported to show and in
23 substance and effect did indicate and declare that on said October 5, 1926, said member bank had made a remittance of $27,125.25 to the Bank of Grand Prairie, and said Bank of Grand Prairie was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustifiable, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Count VI

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That Drury D. Adams and Edwin Army Hodges, on or about the 8th day of March, 1927, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit—that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Arkansas, which said Union Bank & Trust Company was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Mo., in the eighth Federal reserve district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in the county of Independence, and in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and
24 assistant cashier, respectively, of said member bank, then and there, with intent on their part to injure and defraud said member band, and to deceive the officers and directors of said Federal reserve bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, willfully, fraudently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting its said banking business—that is to say, in the book and record of said member bank known and designated as "journal, ledger, and daily balance" book, on the page in said book dated "Mar. 8, 1927," on the debit side of said page under the heading "Items," in the division and space of said page used for the account of the "Sundry names (items in transit)," and being the ninth item thereof, a copy of said entry being as follows:

"Hazen, 27,125.25"

which said entry then and there purported to show, and did in substance and effect indicate and declare, that on the said 8th day of March, 1927, said member bank had sent to the Bank of Prairie, Hazen, Arkansas, certain items aggregating $27,125.25 for collection for the account of the said member bank, whereas in truth and in fact no such remittance of $27,125.25 for the account of said member bank was sent by said member bank on the said 8th day of March,

1927, to the said Bank of Grand Prairie, Hazen, Arkansas, for collection for the account of the said member bank, and the said Bank of Grand Prairie was not then and there entitled to be charged therefor, and said entry so made as aforesaid was unjustifiable, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Count VII

25 And the grand jurors aforesaid, on their oaths aforesaid, do further present:

That Drury D. Adams and Edwin Army Hodges, on or about the 31st day of December, 1926, at Batesville, in Independence County, in the State of Arkansas, were officers and agents, to wit—that is, the said Drury D. Adams was president and the said Edwin Army Hodges was assistant cashier of the Union Bank & Trust Company, of Batesville, Ark., which said Union Bank & Trust Co., was then and there a banking corporation that had theretofore been created, organized, and established and was then and there existing and in operation and doing business under and by virtue of the laws of the State of Arkansas concerning banks, and which Union Bank & Trust Company was then and there a member bank of the Federal Reserve Bank of St. Louis, Mo., in the eighth Federal district, in compliance with and under and by virtue of the act of Congress of December 23, 1913, as amended, known as the Federal reserve act, and was then and there existing and doing a banking business in the city of Batesville, in Independence County, in the State of Arkansas, as a member of the Federal reserve system of the United States, under the laws of the United States, and is hereinafter referred to as "said member bank"; and that they, the said Drury D. Adams and Edwin Army Hodges, so being president and assistant cashier, respectively, of said member bank, then and there with intent on their part to injure and defraud the said member bank, and to deceive the officers and directors of the Federal reserve bank and of said member bank, and the agents and examiners appointed under the laws of the United States to examine the affairs of said member bank, unlawfully, willfully, fraudulently, and feloniously did make and cause to be made a certain false entry in a certain book and record then and there used by said member bank in transacting

26 its said banking business—that is to say, in a book and record of said member bank, known and designated as the "journal, ledger, and daily balance" book, on the page in said book dated "Dec. 31, 1926," on the debit side of said page under the heading "Items," in the division and space of said page used for the account of "Lib. Cent. Tr. Co.," a copy of said entry being as follows:

"R 10000.00"

which said entry then and there purported to show and did in substance and effect indicate and declare that on said 31st day of December, 1926, said member bank had made a remittance of $10,000 to the Liberty Central Trust Company, of St. Louis, Missouri, whereas in truth and in fact no such remittance of $10,000.00 was made on said date by said member bank to the said Liberty Central Trust Company, and said Liberty Central Trust Company was not then and there entitled to be charged therefor, and said entry so as aforesaid made was unjustified, unwarranted, and false, as they, the said Drury D. Adams and Edwin Army Hodges, then and there well knew, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

(Signed) IRA J. MACK,
Assistant United States Atty.

Indorsed:
No. 9100.
Signed C. C. Kavanaugh, foreman.
Filed April 3, 1928.

28 In United States District Court, Eastern District of Arkansas, Northern Division

No. 1113

UNITED STATES OF AMERICA *vs.* D. D. ADAMS ET AL.

Judgment

June 4, 1929

Now, on this day, June 4, 1929, this cause comes on for consideration on the regular call of the docket, and the United States appears by Charles F. Cole, United States attorney for the Eastern District of Arkansas, and the defendant, D. D. Adams, appears in person and by his attorneys, T. H. Caraway and Coleman & Reeder. And thereupon is presented to the court the plea of former jeopardy and former acquittal heretofore filed herein by the defendant, D. D. Adams, to the second count of the indictment against him herein, and the same is submitted to the court upon the indictment herein and said plea of former jeopardy and former acquittal, a copy of the indictment in the case of the United States vs. D. D. Adams, No. 1116, formerly pending in the District Court of the United States, Northern Division of the Eastern District of Arkansas, and the judgment of acquittal in said case, entered upon a verdict of not guilty returned by a jury therein, no other evidence being introduced, the argument of counsel

in support of said plea, as well as the argument of the district attorney in opposition thereto, and the court being well and sufficiently advised as to the law arising upon said plea doth find that under the provisions of section 5209 of the Revised Statutes of the United States, as amended, and as now construed by this court, said plea of former jeopardy and former acquittal should be sustained.

29 Thereupon the United States of America, through its said district attorney, entered a nolle-prosequi as to the first count of the indictment herein as to all of the defendants and as to the second count thereof as to defendant Edwin Army Hodges.

It is, therefore, by the court considered, ordered, and adjudged that said plea of former jeopardy and former acquittal filed by D. D. Adams as to the second count of said indictment be, and the same is, hereby sustained, and said indictment is hereby dismissed as to the defendant D. D. Adams, and that the bond of defendant D. D. Adams be exonerated. Thereupon the plaintiff, the United States of America, through its said district attorney, objected and excepted to the ruling and judgment of the court in sustaining said plea of former jeopardy and former acquittal and dismissing the second count of said indictment and exonerating the bond of defendant, D. D. Adams, and asked that its objections and exceptions be noted of record, which is hereby accordingly done.

It is further ordered that the second count of the indictment herein as to the defendant Charles D. Metcalf is continued until the next term of this court.

(Signed) JOHN E. MARTINEAU,
United States District Judge.

30 [Copy]

In United States District Court

Memorandum on sustaining plea of former jeopardy and acquittal

The plea of the defendant, Drury D. Adams, of former jeopardy and former acquittal coming on for hearing, the court finds that the three items constituting the difference between the deposits actually in the three banks are the three items upon which three counts of a former indictment were based, and upon which the defendant Drury D. Adams was tried and acquitted, and that the only difference between this charge and the charges in the former indictment is that entries were made of the same items in different books or reports, the charge in this indictment and the charges in the former indictment growing out of the same acts of the defendant, Drury D. Adams, and the defendant's plea of former jeopardy and former acquittal is sustained.

(Signed) JOHN E. MARTINEAU,
U. S. District Judge.

32 In United States District Court

[Title omitted.]

Order allowing appeal

Upon reading the petition of the United States of America for appeal from this court to the Supreme Court of the United States and consideration of the assignment of errors presented therewith, it is by the court ordered that the appeal as prayed for be and the same is hereby allowed and granted, and the clerk of this court is hereby directed to forthwith prepare a transcript of the record, proceedings, papers, orders, and judgments entered in said cause under the seal of this court, and transmit the same to the Supreme Court of the United States.

Signed this 1 day of July, 1929.

(Signed) JOHN E. MARTINEAU,
United States District Judge,
Eastern District of Arkansas.

33 In United States District Court

[Title omitted.]

Petition for appeal

Filed July 1, 1929

TO THE HONORABLE JOHN E. MARTINEAU, JUDGE OF THE DISTRICT COURT AFORESAID:

And now comes the United States of America, plaintiff herein, by Charles F. Cole, United States district attorney, and respectfully shows to said court that it feels itself aggrieved by the judgment of this court made and entered of record by said court on the 4th day of June, 1929, in the above-entitled cause, sustaining the plea of former jeopardy and former acquittal filed by the defendant, D. D. Adams, to the second court of the indictment herein and dismissing said second count of said indictment and exonerating the bond of the defendant, and it hereby appeals from said order and judgment to the Supreme Court of the United States from said District Court of the Northern Division of the Eastern District of Arkansas, for the reasons particularly specified in the assignment of errors which is filed herein, and it prays that this appeal may be allowed by this court and that a transcript of the record, proceedings, and papers upon which said order and judgment was made, duly authenticated by the seal of this court, may be sent to the Supreme Court of the United States, as by law provided.

(Signed) CHAS. F. COLE,
United States District Attorney for the Eastern District of Arkansas, Attorney for Plaintiff.

[File indorsement omitted.]

34 In United States District Court

[Title omitted.]

Assignment of errors

Filed July 1, 1929

Comes the plaintiff, United States of America, by Charles F. Cole, and prays an appeal from the final judgment of this court in sustaining the plea of former jeopardy and former acquittal filed by the defendant, D. D. Adams, to the second count of the indictment herein and dismissing said second count of said indictment and exonerating the bond of said defendant, and assigns as errors the following, to wit:

I

That the court erred in sustaining said plea of former jeopardy and former acquittal and dismissing said second count of said indictment and exonerating the bond of said D. D. Adams.

II

That the judgment of the court is contrary to the law.

Wherefore, said plaintiff in error prays that the said judgment of the said District Court of the United States may be reversed and held for naught, and that plaintiff be granted such other and further relief as may seem right to the court and provided by law.

(Signed) CHAS. F. COLE,
United States District Attorney for the Eastern District of Arkansas, Attorney for United States.

[File indorsement omitted.]

35 [Citation in usual form showing service on D. D. Adams omitted in printing.]

36 [Clerk's certificate to foregoing transcript omitted in printing.]

37 In Supreme Court of the United States

Statement of points upon which appellant will rely, and designation of parts of record to be printed

Filed Aug. 10, 1929

Statement

I

Appellant will rely upon the following point in the above-entitled cause:

38 1. That the court below erred in sustaining the plea of former jeopardy and former acquittal, and dismissing the second count of the pending indictment.

II

Omitting pages 1, 2, 7, 8, 9, 27, and 31, the record as filed should be printed.

CHARLES E. HUGHES, JR.,
Solicitor General.
O. R. LUHRING,
Assistant Attorney General.
HARRY S. RIDGELY,
Attorney.

39 [File indorsement omitted.]

[Indorsement on cover:] File No. 34,413. E. Arkansas D. C. U. S. Term No. 282. United States of America, appellant, vs. D. D. Adams. Filed July 31, 1929. File No. 34,413.

U. S. GOVERNMENT PRINTING OFFICE: 1929

Office Supreme
AUG 24
CHARLES ELMO

FILE COPY

No. 282

In the Supreme Court of the United States

OCTOBER TERM, 1929

UNITED STATES OF AMERICA, APPELLANT

v.

D. D. ADAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

STATEMENT OF JURISDICTION

In the Supreme Court of the United States

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No. 282

UNITED STATES OF AMERICA, APPELLANT

v.

D. D. ADAMS

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF ARKANSAS

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court appellant submits herewith its statement showing the basis of this Court's jurisdiction in the above-entitled cause.

A

STATUTORY PROVISIONS

The statutory jurisdiction of this Court to review by direct appeal the judgment here complained of is found in the Act of March 2, 1907 (c. 2564, 34 Stat. 1246; U. S. C. Title 18, Sec. 682), otherwise known as the Criminal Appeals Act, and Section 238 of the Judicial Code, as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938; U. S. C. Title 28, Sec. 345).

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B

DATES OF JUDGMENT AND APPLICATION FOR APPEAL

The judgment to be reviewed was entered on June 4, 1929. (R. 28–29.)[1] Petition for appeal was filed on July 1, 1929 (R. 33), and allowed on the same day (R. 32).

C

NATURE OF THE CASE

Count two of the indictment charges appellee with making false entries in a report of condition of a member bank of the Federal Reserve System purporting to show a certain amount due from other banks, when in truth no such sum was due. (R. 4–6.) Appellee filed thereto a "plea of former jeopardy and former acquittal," alleging that he had been tried and acquitted under certain counts of a previous indictment charging false entries of the same sums in the books of the bank, and that as all the entries are based upon the same transactions, only one offense was committed; that the evidence offered at the trial at which he was acquitted is the same evidence required to establish the offense described in the pending indictment. (R. 10–14.) The trial court sustained the plea and dismissed count two of the indictment on the ground that the only difference between the two indicment charges

[1] All references to the record are to the pages of the typewritten record as prepared by the Clerk of the District Court. The record has not yet been printed.

is that "entries were made of the same items in different books or reports." (R. 28–30.)

D

CASES SUSTAINING JURISDICTION

United States v. *Thompson*, 251 U. S. 407.
United States v. *Oppenheimer*, 242 U. S. 85.
United States v. *Barber*, 219 U. S. 72.
United States v. *Goldman*, 277 U. S. 229.

CHARLES E. HUGHES, Jr.,
Solicitor General.
O. R. LUHRING,
Assistant Attorney General.
HARRY S. RIDGELY,
Attorney.

AUGUST, 1929.

U. S. GOVERNMENT PRINTING OFFICE: 1929

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DEC
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BRIEF FOR THE UNITED STATES

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Revised Statutes, sec. 5209, as amended by the act of September 26, 1918, ch. 177, 40 Stat. 967, 972 (U. S. C. Title 12, sec. 592) 2
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In the Supreme Court of the United States

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UNITED STATES OF AMERICA, APPELLANT

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 16) has not been reported.

JURISDICTION

The judgment to be reviewed was entered on June 4, 1929. (R. 15.) Petition for appeal was filed on July 1, 1929, and allowed the same day (R. 17), pursuant to the provisions of the Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C. Title 18, Sec. 682). Statement of jurisdiction was filed in compliance with Rule

12 of this Court on August 24, 1929, and on October 28, 1929, this Court found that probable jurisdiction had been shown.

QUESTION PRESENTED

The sole question presented is whether an acquittal under an indictment charging false entries in specified books of a bank is a bar to a prosecution under an indictment charging a false entry made on a different occasion in a report of condition, it being alleged that the latter entry represents the aggregate of the false entries described in the first indictment.

STATUTE INVOLVED

Section 5209 R. S. as amended by the Act of September 26, 1918, c. 177, 40 Stat. 967, 972 (U. S. C. Title 12, Sec. 592), reads as follows, so far as pertinent:

> Any officer, director, agent, or employee of any Federal reserve bank, or of any member bank as defined in the Act of December twenty-third, nineteen hundred and thirteen, known as the Federal reserve Act, who * * * makes any false entry in any book, report, or statement of such Federal reserve bank or member bank, with intent in any case to injure or defraud such Federal reserve bank or member bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such Federal reserve bank or member

> bank, or the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of such Federal reserve bank or member bank, or the Federal Reserve Board; * * * shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States shall be fined not more than $5,000 or shall be imprisoned for not more than five years, or both, in the discretion of the court.

STATEMENT

Count two of the pending indictment, the only count here involved, charges, in substance, that defendant, an officer of the Union Bank & Trust Company of Batesville, Ark., a member bank of the Federal Reserve System, made a false entry in a report to the Federal Reserve Bank of St. Louis of condition of his bank at the close of business on December 31, 1926, purporting to show that the sum of $138,409.52 was due from outside banks, when in fact a much smaller sum was due. (R. 2.) He thereupon filed a " plea of former jeopardy and former acquittal " alleging that he had been previously tried and acquitted under counts III, V, VI, and VII of an indictment charging him with making on different days in the Journal, Ledger, and Daily Balance book of the bank false entries purporting to show on designated days remittances to outside banks, when no such remittances were made. (R. 4–7.) He alleged that all the entries were based upon the same transactions, and that each indictment charge would require the same

evidence. (R. 3, 6, 7.) No evidence was offered in support of the plea except the former indictment and the judgment of acquittal thereon. (R. 15.) The trial court sustained the plea on the ground that the only difference between the two indictment charges is that "entries were made of the same items in different books or reports." (R. 16.)

ARGUMENT

THE OFFENSE CHARGED IN COUNT II OF THE PENDING INDICTMENT IS NOT IDENTICAL WITH THE OFFENSES OF WHICH DEFENDANT WAS ACQUITTED

Unless the offenses, not the transactions, set forth in the counts of the indictment under which the appellee was acquitted, are identical with the offense described in Count II of the indictment the dismissal of which below is now before this Court for review, such judgment of dismissal must be reversed.

Taking up first the counts of the indictment under which appellee was acquitted, it appears that Count III charged the making of a false entry on August 23, 1926, in the Journal, Ledger, and Daily Balance Book, purporting to show that $10,000 had been remitted to a certain trust company. (R. 9–10.) Count V charged a false entry on October 5, 1926, in the same book, purporting to show that $27,125.25 had been remitted to a different bank. (R. 12.) Count VI charged a false entry on March 8, 1927, in the same book purporting to show that items aggregating $27,125.25 had been sent to a

certain bank for collection. (R. 13.) Count VII charged that on December 31, 1926, a false entry was made in the same book purporting to show that $10,000 had been remitted to a certain trust company. (R. 14–15.)

Count II of the pending indictment which is asserted to be a mere aggregate duplication of the offenses of which appellee was acquitted, charges that on January 10, 1927, defendant made a false entry in a report to the Federal Reserve Bank at St. Louis, Missouri, purporting to show that at the close of business on December 31, 1926, there was due from outside banks $138,409.52, when in truth a much smaller sum was due. (R. 2–3.)

It requires no argument to demonstrate that measured by the test stated by this Court in the cases set forth in the Government's brief in No. 281, *United States* v. *Adams,* filed simultaneously herewith, to which reference is made, the evidence *required* to establish the offenses described in the counts of the indictment under which defendant was acquitted, would by no means establish the offense described in Count II of the pending indictment. Under the pending indictment the question is the truth or falsity of the entry in the report showing that on December 31, 1926, certain banks owed defendant's bank a certain sum of money. Manifestly evidence tending to establish the falsity of entries in the bank's books on earlier different days showing remittances to outside banks, would not establish the falsity of the entry described in

the pending indictment covering the amount asserted to be due from outside banks on December 31, 1926, a date later than those of the alleged remittances mentioned in the counts under which an acquittal was had. It is plain that the offense described in the pending indictment is not the same offense of which defendant has been acquitted.

The allegation of the plea that the Government must rely on the same evidence in both cases is erroneous on its face and a mere conclusion of law of the pleader.

CONCLUSION

It is respectfully submitted that the judgment below should be reversed.

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O. R. LUHRING,
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DECEMBER, 1929.

U. S. GOVERNMENT PRINTING OFFICE: 1929

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FEB 21 1930

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

FEBRUARY TERM, 1930.

No. 282.

UNITED STATES OF AMERICA, *Appellant*,

vs.

D. D. ADAMS, *Appellee*.

BRIEF FOR ADAMS.

T. H. CARAWAY,
Attorney for Adams.

COLEMAN AND REEDER,
Associated Attorneys.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

FEBRUARY TERM, 1930.

No. 282.

UNITED STATES OF AMERICA, *Appellant*,

vs.

D. D. ADAMS, *Appellee*.

BRIEF FOR ADAMS.

The issue raised on this appeal involves the same question which is presented in United States of America v. Adams, No. 281, now pending. That is, whether the recording of the same item in separate books or records of the bank, if this entry be a false entry, will constitute one offense or a separate offense for each book or record in which the transaction may be recorded. In this case Adams was indicted, tried and acquitted on an indictment alleging that he had caused false entries to be made in the books of the Union Bank & Trust Company of Batesville, Arkansas, an associ-

ate member bank, touching three items aggregating $47,125.25. These constituted three separate counts in an indictment on which Adams was acquitted on a trial on the former indictment.

These items which were items of credit aggregated, as said before, $47,125.25. The inclusion of this aggregate item in a "report of conditions" of said bank to the Federal Reserve bank of St. Louis, Missouri, was made the basis of a charge alleging that that inclusion constituted a false entry made in said report, to which indictment a plea of former jeopardy and former acquittal was urged and sustained. This differs from the case briefed under No. 281 only in that the items were entered in the books of said bank as of date August 23, 1926, and the "report of conditions" was made December 31st of that year. The items are the same and the good or bad faith of Adams in causing the entry to be made in the books of the bank as of date August 23d, 1926, for which he was indicted and acquitted, and the "report of conditions" was the same.

However, learned counsel for the Government stressed this difference in date as a reason for the reversal of this cause. In the Government's brief, page 5, is this language:

> "It requires no argument to demonstrate that measured by the test stated by this court in the cases set forth in the Government's brief in No. 281, United States v. Adams, filed simultaneously herewith, to which reference is made, the evidence required to establish the offenses described in the counts of the indictment under which defendant was acquitted, would by no means establish the offense described in Count II of the pending indictment. Under the pending indictment the question is the truth or falsity of the entry in the re-

port showing that on December 31, 1926, certain banks owed defendants' bank a certain sum of money. Manifestly evidence tending to establish a falsity of entries in the Bank's books on earlier different days showing remittances to outside banks, would not establish the falsity of the entry described in the pending indictment covering the amount asserted to be due from outside banks on December 31, 1926, a date later than those of the alleged remittances mentioned in the counts under which an acquittal was had."

This argument might present a reason, but it would be a speculative reason—in that it might be contended that conditions have changed and, therefore, the intent that accompanied Adams' act in causing the entries to be made in the bank and that causing the report to be made might be a different intent and be proved by different circumstances.

The fallacy of this is demonstrated, however, by the language of the plea of former jeopardy and former acquittal which recites among other things the following:

"* * * that before the jury would be authorized to convict the defendant in this case of making false entries it would first be necessary for it to consider the *same evidence* submitted to the jury in the former trial and to draw different and opposite conclusions from said evidence to that reached by the jury in the former trial.

And defendant here tenders proof of all the allegations and facts set up and alleged herein, and prays that upon a hearing of said evidence that the indictment herein be quashed and that defendant be discharged." (R. 6-7)

If this contention of the plea of former jeopardy and former acquittal be good, the Court was correct in sustaining it.

The judgment of the Court is conclusive that such is the fact. On pages fifteen and sixteen of the record, the judgment recites the following:

> "Now, on this day, June 4, 1929, this cause comes on for consideration on the regular call of the docket and the United States appears by Charles F. Cole, United States attorney for the Eastern District of Arkansas, and the Defendant, D. D. Adams, appears in person and by his attorneys, T. H. Caraway and Coleman & Reeder, and thereupon is presented to the court the plea of former jeopardy and former acquittal heretofore filed herein by the defendant, D. D. Adams, to the second count of the indictment against him herein, and the same is submitted to the court upon the indictment herein and said plea of former jeopardy and former acquittal, a copy of the indictment in the case of the United States vs. D. D. Adams, No. 1116, formerly pending in the District Court of the United States, Northern Division of the Eastern District of Arkansas, and the judgment of acquittal in said case, entered upon a verdict of not guilty returned by a jury therein, no other evidence being introduced, the argument of counsel in support of said plea, as well as the argument of the district attorney in opposition thereto, and the court being well and sufficiently advised as to the law arising upon said plea doth find that under the provisions of section 5209 of the Revised Statutes of the United States, as amended, and as now construed by this Court, said plea of former jeopardy and former acquittal should be sustained."

Learned counsel for the Government seems also to have overlooked the Memorandum on sustain-

ing the plea of former jeopardy and former acquittal as it appears on page sixteen of the record which recites:

> "The plea of the defendant, Drury D. Adams, of former jeopardy and former acquittal coming on for hearing, the court finds that the three items constituting the difference between the deposits actually in the three banks are the three items upon which three counts of a former indictment were based, and upon which the defendant Drury D. Adams was tried and acquitted, and that the only difference between this charge and the charges in the former indictment is that entries were made of the same items in different books or reports, the charge in this indictment and the charges in the former indictment growing out of the same acts of the defendant, Drury D. Adams, and the defendant's plea of former jeopardy and former acquittal is sustained."

It will be observed that the Court finds:

> "* * * THE ONLY DIFFERENCE BETWEEN THIS CHARGE AND THE CHARGES IN THE FORMER INDICTMENT IS THAT THE ENTRIES WERE MADE OF THE SAME ITEMS IN DIFFERENT BOOKS OR REPORTS, THE CHARGE IN THIS INDICTMENT AND THE CHARGES IN THE FORMER INDICTMENT GROWING OUT OF THE *SAME ACTS* OF THE DEFENDANT, DRURY D. ADAMS, AND THE DEFENDANT'S PLEA OF FORMER JEOPARDY AND FORMER ACQUITTAL IS SUSTAINED." (R. 16)

To this finding of fact no exceptions were entered or saved and the correctness of the finding is not before this Court. It necessarily follows, therefore, that the

Court was correct in sustaining the plea because the intent with which Adams acted in causing the entries to be made in each case was the essence of the charge. If he had no intent either to injure, defraud or deceive in causing said entries to be made, he was not guilty of any offense. The Court found that the intent of Adams at the time of causing to be made entries of which he was formerly tried and acquitted and that which is the basis of the indictment now pending before the Court was the same intent.

In the language of the Court "* * * **the only difference between this charge and the charges in the former indictment is that entries were made of the same items in different books or reports** * * *".

As before said, to that finding and announcement of fact there were no exceptions saved and the correctness of that finding is not here for review.

The only question before this Court is whether the recording of an item alleged to have been a false entry in different books or reports of the same bank setting out exactly the same transaction constitutes one offense or as many offenses as this transaction is recorded in the different books or reports of the bank.

That question is briefed in No. 281, The U. S. of America v. Adams, which brief is herein referred to and respectfully asked to be considered as the brief in this cause submitted.

Respectfully submitted,

T. H. Caraway,
Attorney for Adams.

Coleman and Reeder,
Associated Attorneys.

SUPREME COURT OF THE UNITED STATES.

Nos. 281 and 282.—October Term, 1929.

281 United States of America, Appellant, *vs.* D. D. Adams.

282 United States of America, Appellant, *vs.* D. D. Adams.

Appeals from the District Court of the United States for the Eastern District of Kansas.

[April 14, 1930.]

Mr. Justice Holmes delivered the opinion of the Court.

The defendant was indicted for a false entry in a book of a bank of which he was president, and which was a member of the Federal reserve system. The entry imported that he had made a deposit of $75,000 to the credit of himself and sons, which it is averred that he had not made. The book was a ledger showing the account of D. D. Adams & Sons, among others, with the bank. The defendant pleaded a former acquittal. The previous indictment was for a false entry in another book of the bank known as the journal ledger and daily balance book, and imported a remittance of $75,000 to another bank to the credit of the defendant's own for which the defendant took credit as above stated. This remittance was a draft for $75,000 which it was alleged that Adams was not entitled to draw. The two entries had reference to the same transaction, were based upon the same draft and were the correlated means of accomplishing a single fraud if fraud there had been. The District Court held that on its construction of Rev. Sts. § 5209, as amended by the Act of September 26, 1918, c. 177, § 7, 40 Stat. 967, 972; U. S. C., Title 12, § 592, there could be but one prosecution for false entries based upon any single draft, even though several different entries were made in the different books of the bank, all relating to the same. Therefore it sustained the plea. The United States appealed.

It is a short point. The statute punishes any officer of a Federal reserve bank who makes any false entry in any book of the bank with intent, &c. The Government contends for the most literal reading of the words, and that every such entry is a separate offense to be separately punished. But we think that it cannot have been contemplated that the mere multiplication of entries, all to the same point and with a single intent, should multiply the punishment in proportion to the complexity of the bookkeeping. The judgment in this case is affirmed.

The second case presents a more delicate question than the previous one, although it was thought by the District Court to come under the same principle. This indictment is for a false entry in a report of conditions of the defendant's bank showing as due from banks other than Federal reserve banks $138,409.52 instead of the true sum $91,284.27. The plea of former acquittal we take as intended to allege that the difference was made by three items in respect of which the defendant had been indicted for false entries in the books of the bank, of a similar character to those in the other case, with intent to defraud the bank and the examiners appointed to examine its affairs. On this indictment also the defendant was acquitted. It is obvious that technically the plea was bad because the offense alleged was a different offense. The report is not an entry in the books of the bank and does not purport to be a mere transcript of entries. It is a present affirmation as to the resources of the bank—a document different from the books of the bank and having a different purpose. But although not technically a former acquittal, the judgment was conclusive upon all that it decided. *United States* v. *Oppenheimer*, 242 U. S. 85. It establishes that at the time of making the entries, the defendant was not guilty of an intent to defraud the bank or the examiners. It does not establish that the entries were true, although that might have been a ground for the verdict. *Washington, Alexandria & Georgetown Steam Packet Co.* v. *Sickles*, 5 Wall. 580. *De Sollar* v. *Hanscome*, 158 U. S. 216, 221, 222. An alternative possible ground is that although the entries were untrue the defendant believed them to be true or for some reason believed them to be justified. However unlikely it may be that there was a different intent at the time of the later act from that with which the entries were made in the books of the bank, it is entirely possible that the defendant sup-

posed himself to be acting lawfully at the earlier moment, but that he had acquired more accurate knowledge before he signed the report, that he then knew that it was false and was guilty then although not before.

281. Judgment affirmed.
282. Judgment reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.